

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**OBDULIA VERGARA**

**Plaintiff,**

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**V.**

**CIVIL ACTION NO. 16-cv-2565**

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**TRANSAMERICA LIFE  
INSURANCE COMPANY**

**Defendant.**

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**TRANSAMERICA'S NOTICE OF REMOVAL**

Defendant Transamerica Life Insurance Company (“Transamerica”) file this Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 as follows:

**REMOVAL**

1. Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Transamerica, Defendant in Cause No. DC-16-09914, 44<sup>th</sup> Judicial District, Dallas County, Texas, serves this Notice of Removal from that Court to the United States District Court for the Northern District of Texas, Dallas Division. This Removal is filed within 30 days of Defendant being served with process and within one year of the filing of the lawsuit in State court.

**PROCEDURAL BACKGROUND**

2. On or about August 15, 2016, Plaintiff Obdulia Vergara (“Plaintiff”) filed her Original Petition, Cause No. DC-09914, in the 44<sup>th</sup> Judicial District Court, Dallas County, Texas (the “State Court Action”) naming Transamerica as the Defendant.

3. Plaintiff states in her Petition they seek damages over \$200,000, but not more than \$1,000,000.000. Plaintiff seeks recovery of the benefits under the insurance contract with Transamerica and assert claims for damages for breach of contract, bad faith, unfair and deceptive insurance practices, prompt payment of claims, and negligence, and seek actual damages, mental

anguish, exemplary damages, attorneys' fees, statutory damages, prejudgment interest, post judgment interest, costs and claim for relief.

4. Transamerica was served with the Petition on August 18, 2016. Transamerica timely filed this Notice of Removal and a Notice of Removal in the State Court Action.

### **DIVERSITY**

5. **Diversity Jurisdiction.** At the time of the filing of Plaintiff's Original Petition and this Notice of Removal, Plaintiff was a citizen of the State of Texas.<sup>1</sup>

6. At the time of commencement of this action and at the time of removal, Defendant Transamerica is an Iowa corporation with its principal place of business in Cedar Rapids, Iowa. For purposes of 28 U.S.C. § 1332(a)(1), Defendant Transamerica is deemed to be a citizen of the State of Iowa.<sup>2</sup> Thus, complete diversity exists between Plaintiff and Defendant.

7. Process and Plaintiff's Original Petition in Cause No. DC-16-09914 was served on Defendant for the first and only time less than 30 days from the date of the filing of this Notice of Removal and this Notice is being filed within one year of the date suit was filed in State Court.

### **AMOUNT IN CONTROVERSY**

8. Under 28 U.S.C. § 1332, a district court has diversity jurisdiction over any case if (1) the parties are diverse and (2) the matter in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs.<sup>3</sup> Ordinarily the federal court ascertains the amount in controversy by looking at the amount claimed in the state court petition.<sup>4</sup> In this matter, Plaintiff alleged in her Petition she seek damages over \$200,000.00, but not more than \$1,000,000.00.<sup>5</sup> The amount in

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<sup>1</sup> See Plaintiffs' Original Petition.

<sup>2</sup> See 28 U.S.C. § 1332(c)(1).

<sup>3</sup> *Trapasso v. Prudential Property and Cas. Ins. Co.*, 220 F.Supp.2d 628, 631 (E. D. Tex. 2002); 28 U.S.C. § 1332(a).

<sup>4</sup> *Manguno v. Prudential Prop. & Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002); *Greenberg*, 134 F.3d at 1255; *De Aguilar v. Boeing Co.*, 47 F.2d 1404, 1412 (5<sup>th</sup> Cir. 1995) cert. denied, 516 U.S. 865 (1995)(*De Aguilar II*)..

<sup>5</sup> Plaintiff's Original Petition, para. VI, p. 5.

controversy exceeds \$75,000 exclusive of interest. Thus, the requisite amount in controversy for diversity jurisdictional purposes is satisfied.

9. Simultaneously with the filing of this Notice of Removal, Transamerica is filing a copy of all processes, pleadings and orders served in State Court. A copy of this Notice is also concurrently being filed with the State Court and served upon opposing counsel.

**WHEREFORE, PREMISES CONSIDERED**, Transamerica prays that this action be removed to this Court from the 44<sup>th</sup> Judicial District of Dallas County, Texas

Respectfully submitted,

By: /s/ Bernie E. Hauder  
BERNIE E. HAUDER  
State Bar No. 09233600  
Attorney-in-Charge

ADKERSON, HAUDER & BEZNEY, P.C.  
1700 Pacific Avenue, Suite 4450  
Dallas, Texas 75201-7323  
214-740-2500 - Telephone  
214-740-2501 - Facsimile  
[Bernie@ahblaw.net](mailto:Bernie@ahblaw.net)  
ATTORNEYS FOR TRANSAMERICA

**CERTIFICATE OF SERVICE**

This is to certify that on this, the 8<sup>th</sup> day of September, 2016 a true and correct copy of the above and foregoing document has been forwarded to the following persons as indicated below:

Jeffrey Beltz  
The Beltz Law Firm  
8360 LBJ Fwy., Ste. 260  
Dallas, TX 75243

Via Hand Delivery  
 Via Certified Mail Return Receipt Requested  
 Via Facsimile  
 Via E-Mail  
 Via Electronic Service

/s/ Bernie E. Hauder  
BERNIE E. HAUDER